



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/153893

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on January 16, 2014, at Kenosha, Wisconsin.

NOTE: The record was held open for Tender Touch Therapy, LLC to submit a copy of a June 10, 2013 evaluation and a journal article. They have been marked as Exhibit 6 and entered into the record.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (herein after referred to as DHS), correctly denied Petitioner's request for speech/language services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On September 17, 2013, Tender Touch Therapy, LLC (Tender Touch) filed on behalf of Petitioner, a request for prior authorization of speech language therapy, 52 sessions over 26 weeks, at a cost of \$6,420.00. (Exhibit 3, pg. 8)
3. On November 13, 2013, DHS sent the Petitioner a notice indicating that his request for services was denied. On November 13, 2013, DHS sent Tender Touch notice of the same. (Exhibit 5, pgs. 63-68)
4. Petitioner's father filed a request for fair hearing on behalf of Petitioner, that was received by the Division of Hearings and Appeals on December 4, 2013. (Exhibit 1)
5. Petitioner is a four-year old boy with speech and language delays related to autism. (Exhibit 6)
6. Petitioner receives school-based speech therapy twice a week, 30 minutes per session. (Testimony of Petitioner's father)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. **Is not duplicative with respect to other services being provided to the recipient;**
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. **Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.**

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

It is the position of DHS that the Petitioner’s request for services does not meet approval criteria because there has been insufficient coordination of care with Petitioner’s school-based speech pathologist. The DHS also denied the prior authorization request, because the goals of the requested service are not covered by Medicaid.

COORDINATION OF CARE

The on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.

Topic 2781 states:

BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.
- Ensure service coordination.
- Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a

year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

Leah [REDACTED], Petitioner's current Speech Language Pathologist (SLP) at Tender Touch, testified that she has not had any direct contact with the school SLP. Ms. [REDACTED]'s supervisor, Jennifer [REDACTED] completed an evaluation of Petitioner in September 2013 and indicated that she has not had contact with Petitioner's school SLP.

Because there has been no actual direct communication with the school SLP, Tender Touch has not satisfied the communication requirements for the prior authorization request to be approved. In the absence of such communication, Tender Touch cannot reasonably conclude that the services for which it seeks approval are an appropriate level of care or are not duplicative in light of all other services Petitioner receives at school.

GOALS OF THE REQUESTED SERVICES

Wis. Admin. Code Section DHS 107.18 discusses what types of speech language services are covered by Medicaid and who must provide those services.

Wis. Admin. Code Section DHS 107.18 (1)(a) defines speech and language pathology services as, "those medically necessary diagnostic, screening, preventative or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language pathologist..."

The short term goals that are stated in Petitioner's most recent plan of care with Tender Touch are:

1. Given visual supports and aids [Petitioner] will transition from task to task, session to session, or between settings with mod verbal prompting without crying or other negative behaviors in 4 of 5 trials...
2. Given frequent breaks and reward system, [Petitioner] will participate in language facilitating tasks with mod verbal prompting...
3. Given visual supports and aids, [Petitioner] will utilize a multi-modal communication dynamic to appropriately comment, request, or refuse tasks, rewards, or other objects with moderate verbal prompting in 4 of 5 trials....
4. Given video models, [Petitioner] will identify appropriate and inappropriate behaviors and responses to activities of daily living and social situation in 4 of 5 trials with moderate verbal prompting...

(Exhibit 5, pg. 18)

With regard to goals one and four it is unclear from the prior authorization request submitted by Tender Touch, how those goals fit into the definition of diagnostic, screening, preventative or corrective speech language pathology services, stated in Wis. Admin. Code Section DHS 107.18 (1)(a), above. As DHS points out in its letter dated December 17, 2013, these goals seem more related to behavior modification than the treatment of a speech/language deficit. (Exhibit 4) As such, those services are not covered by Medicaid.

It should be noted that Wis. Admin. Code Section DHS 107.18(1)(c) clearly defines the services that must be provided either by a certified speech language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist. Goals one and four do not clearly fit into those categories:

1. Expressive language:
 - a. Articulation;
 - b. Fluency;
 - c. Voice;
 - d. Language structure, including phonology, morphology, and syntax;
 - e. Language content, including range of abstraction in meanings and cognitive skills; and
 - f. Language functions, including verbal, non-verbal and written communication;
2. Receptive language:
 - a. Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
 - b. Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;
3. Pre-speech skills:
 - a. Oral and peri-oral structure;
 - b. Vegetative function of the oral motor skills; and
 - c. Volitional oral motor skills; and
4. Hearing/auditory training:
 - a. Hearing screening and referral;
 - b. Auditory training;
 - c. Lip reading;
 - d. Hearing aid orientation; and
 - e. Non-verbal communication.

Because all of the goals stated in the prior authorization request do not fall into the definition of covered speech language pathology services, the prior authorization request submitted by Tender Touch cannot be approved at this time.

I note to the Petitioner that his provider, Tender Touch Therapies, will not receive a copy of this Decision. Petitioner might wish to share this with the Provider for future reference.

CONCLUSIONS OF LAW

DHS correctly denied Petitioner's request for prior authorization of speech language services.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

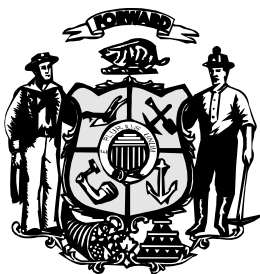
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of February, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 11, 2014.

Division of Health Care Access and Accountability